TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~398.~~ 138 19

WILLIAM H. BARNES AND JAMES N. KERNS, PLAINTIFFS IN ERROR,

vs.

THE HARRISBURG, PORTSMOUTH, MOUNT JOY, AND LANCASTER RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED DECEMBER 6, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 338.

WILLIAM H. BARNES AND JAMES N. KERNS, PLAINTIFFS IN ERROR,

vs.

THE HARRISBURG, PORTSMOUTH, MOUNT JOY, AND LANCASTER RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Petition for certiorari to supreme court of Pennsylvania	1	1
Writ of certiorari	5	2
Record of supreme court of Pennsylvania	8	3
Declaration	12	4
Pleas	13	5
Replication and demurrer	15	7
Withdrawal of plea "not guilty"	16	7
Judgment for plaintiffs on demurrer	16	7
Writ of inquiry of damages	17	8
Inquisition and return	20	9
Final judgment	23	10
Assignment of errors	23	10
Citation on appeal	24	10
Writ of error	26	11
Certificate of clerk	27	11

1 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit. Of April sessions, 1870, No. 26.

It is thus contained:

Be it remembered that, on the ninth day of May, in the year of our Lord one thousand eight hundred and seventy, John K. Valentine, esquire, assistant district attorney of the United States for the eastern district of Pennsylvania, comes into court here and presents the petition of William H. Barnes, and James N. Kerns, for the removal of the cause from the supreme court of Pennsylvania for the eastern district; which said petition, being filed, is in the words and of the tenor following, to wit:

To the honorable the circuit court of the United States for the
2 eastern district of Pennsylvania, in the third circuit:

Your petitioners, William H. Barnes, and James N. Kerns, respectfully represent that suit has been commenced against them by "The Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company" in the supreme court of Pennsylvania in and for the eastern district, of July term, 1870, No. 68. Summons, trespass vi et armis.

That your petitioners are officers of the United States, appointed under and acting by authority of the act of Congress, entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," passed June 30th, 1864, and acts in addition thereto and in amendment thereof, to wit, the said William H. Barnes, collector of internal revenue for the first district, for assessing and collecting taxes in the State of Pennsylvania, and the said James N. Kerns, deputy collector of the said first district. That the said suit has been brought against your said petitioners on account of an act done by them under color of their said offices as said
3 collector and deputy collector, to wit, on account of a distraint made by them, the said William H. Barnes and James N. Kerns, in their several official capacities, for the purpose of collecting a tax claimed by the United States from the said plaintiffs and duly assessed against them.

Your petitioners therefore pray that the cause may be entered on the docket of your honorable court and proceeded in as in a cause originally commenced therein, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the prothonotary of the supreme court of the State of Pennsylvania aforesaid, requiring the said supreme court to send to the said circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided. And they will ever pray, &c.

JAMES N. KERNS.

William H. Barnes, one of the above-named petitioners, being duly sworn according to law, says that the facts set forth in the above
4 petition are true, to the best of his knowledge and belief.

Sworn and subscribed before me this day of May, A. D. 1870.

James N. Kerns, one of the above-named petitioners, being duly sworn according to law, says that the facts set forth in the above petition are true, to the best of his knowledge and belief.

JAMES N. KERNS.

Sworn and subscribed before me this 9th day of May, 1870.

W. GRIER HIBLER,
U. S. Commissioner.

I hereby certify that, as counsel for said petitioners, William H. Barnes and James N. Kerns, I have examined the proceedings against them and carefully enquired into all the matters set forth in the foregoing petition, and that I believe the same to be true.

AUBREY H. SMITH,
U. S. Attorney.

Which said petition being filed, it was ordered by the court here that a writ of certiorari do immediately issue, directed to
5 the supreme court of Pennsylvania; which said writ was in the words following, to wit:

The President of the United States to the honorable the judges of the supreme court of Pennsylvania for the eastern district, greeting:

Whereas lately in your said supreme court of Pennsylvania for the eastern district, suit was brought against William H. Barnes and James N. Kerns, by The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company, in a plea of trespass vi et armis, (of July term, 1870, No. 68,) which said plea, as it is said, is still pending before you in the said supreme court of Pennsylvania, undetermined; and whereas on the application of the said William H. Barnes and James N. Kerns, to the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, on a suggestion, supported by proper evidence, that the said suit was brought on account of acts done by them under and acting by authority of the act
6 of Congress, entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," passed June 30th, 1864, and acts in addition thereto and in amendment thereof, to wit, the said William H. Barnes, collector of internal revenue for the first district, for assessing and collecting taxes in the State of Pennsylvania, and the said James N. Kerns, deputy collector of said first district, to wit, on account of a distraint made by them, the said William H. Barnes and James N. Kerns, in their said official capacities, for the purpose of collecting a tax claimed by the United States from the said The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company and duly assessed against them. They therefore respectfully pray that a writ of certiorari may be immediately issued by the clerk of the said court of the United States to the said supreme court of Pennsylvania, requiring them to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provisions of the act of Con-
7 gress in such case made and provided.

Wherefore, you are hereby required to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, plainly and distinctly,

in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court may be able therein to proceed and to do what shall appear of right ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this ninth day of May, A. D. 1870, and in the 94th year of the independence of the United States.

[SEAL.] SAMUEL BELL,
Clerk C. C. U. S., E. D. Pa.

And afterwards, to wit, on the seventeenth day of May, A. D. 1870, the writ of certiorari was returned into the said circuit court of the United States with the record and proceedings of the said
8 supreme court of Pennsylvania annexed; which said return and record being read, are as follows, to wit:

A certified copy of the record and proceedings in the case herein mentioned, is herewith transmitted to the circuit court of the United States as is herein required.

Attest: JAMES ROSS SNOWDEN,
Prothonotary.

In the supreme court of Pennsylvania for the eastern district. July term, 1870.

THE HARRISBURG, PORTSMOUTH, MOUNT JOY, and Lancaster Railroad Company,
vs.
WILLIAM H. BARNES AND JAMES N. KERNS. } S. C. No.—68.

Summons, in trespass vi et armis.
Issue writ as above, ret'ble to first Monday of June, 1870.

CHAPMAN BIDDLE,
For self, & Theo. Cuyler, Pl'ff's Att'y.

To the PROTH'Y OF THE S. C.
MAY 5, '70.

9 (Endorsement:) No. 68. July term, 1870. Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company, vs. William H. Barnes et al. Precipe for summons, trespass. Filed May 5th, 1870. Chapman Biddle, Theo. Cuyler.

10 EASTERN DISTRICT OF PENNSYLVANIA,
City and County of Philadelphia, ss:

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Philadelphia County, greeting:

We command you that you summon William H. Barnes and James N. Kerns, late of your county, so that they be and appear before the justices of our supreme court at our same court, to be holden at Philadelphia, in and for the eastern district of the State of Pennsylvania, on the first Monday of June next, to answer The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company of a plea of trespass vi et armis, and have you then and there this writ.

Witness the Hon. James Thompson, doctor of laws, chief justice of our said supreme court, at Philadelphia, the fifth day of May, in the year of our Lord one thousand eight hundred and seventy.

JAMES ROSS SNOWDEN,
Prothonotary.

(Endorsed:) No. 68. July term, 1870. Supreme court. The Harrisburg, Portsmouth, Mount Joy, & Lancaster Railroad Company vs. William H. Barnes & James N. Kerns. Summons. Returnable the first Monday of June, 1870. Chapman Biddle, Theo. Cuyler.

Served by giving a true and attested copy of the within to each of the within named defendants, and making known to them the contents thereof. So answers—

JEREMIAH W. FRITZ,
Dep. Sh'ff.
PETER LYLE, *Sheriff.*

MAY 5TH, 1870.

11 *Docket entries.—Appearance docket. July term*, 1870. *No.* 78.

C. Biddle; Theo. Cuyler.

THE HARRISBURG, PORTSMOUTH, MOUNT JOY, and Lancaster Railroad Company
vs.
WILLIAM H. BARNES AND JAMES N. KERNS. } 68.

Summons, trespass vi et armis, ret'ble first Monday of June, 1870. Exit May 5, 1870. "Served."

I certify the above and foregoing to be a true copy of the whole record, docket entries, and proceedings in the above case.

In witness whereof I have hereunto set my hand and affixed the seal of the said supreme court, at Philadelphia, this twelfth day of May, A. D. 1870.

[SEAL.] JAMES ROSS SNOWDEN,
Prothonotary.

12 And afterwards, to wit, on the twenty-fifth day of May, in the year aforesaid, the said plaintiffs, "The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company," by Chapman Biddle and Theo. Cuyler, esquires, their attorneys, come into court here and file their declaration; which being read, is as follows, to wit:

Declaration.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

William H. Barnes and James N. Kerns, the defendants, were summoned to answer The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company of a plea of trespass, &c.; and thereupon the said plaintiffs, by Chapman Biddle and Theodore Cuyler, their attorneys, complain against the said defendants, for that the said defendants, on the fourth day of May, A. D. 1870, with force and arms, &c., seized, took, and distrained certain goods and chattels, to wit, three walnut desks, six walnut chairs, one table, and other personal property of said plaintiffs, being in their office building, situate at the southwest corner of Third street and Willing's alley, in the said city and county, of great value, to wit, of the value of thirty-five hundred dollars, at the city and county aforesaid, and then and there kept and detained the said goods and chattels, so seized and distrained, for a long space of time, to wit, for the

space of one day, then next following, whereby the said plaintiffs, for and during all that time, lost, and were deprived of, the use and benefit of the said goods and chattels, and thereby the same then and there became and were greatly damaged, lessened in value, and spoiled, to wit, at the city and county aforesaid, and other wrongs to the said plaintiffs then and there did, against the peace of the Commonwealth of Pennsylvania, and to the damage of the said plaintiffs of five thousand dollars; and thereupon they bring their suit, &c.

CHAPMAN BIDDLE,
THEO. CUYLER,
Plaintiffs' Attorneys.

JNO. DOE,
RICH'D ROE, } Pledges, &c.

And afterwards, to wit, on twenty-seventh day June, in the
13 year last aforesaid, the said defendants, William H. Barnes and James N. Kerns, by Aubrey H. Smith, esquire, their attorney, come into court here and filed their pleas; which said pleas are as follows, to wit:

Pleas.

First plea. And the said defendants, by Aubrey H. Smith, their attorney, come and defend the force and injury when, &c., and say that they are not, nor is any or either of them, guilty of the said supposed trespasses above laid to their charge, or any or either of them, or any part thereof, in manner and form as the said plaintiffs have above complained against them; and of this the said defendants put themselves upon the country, &c.

Second plea. And for a further plea in this behalf, the said defendants, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them, because they say that the said plaintiffs are a railroad company, duly incorporated under and in pursuance of the laws of Pennsylvania; and as such did, on the 10th day of January, 1870, declare a dividend in money amounting to the sum of forty-three thousand five hundred and sixty-seven dollars and sixty-three cents ($43,567 63) on their capital stock, as part of their income and gains made and accrued between the first day of July, 1869, and the first day of January, 1870, which dividend was declared to be payable to the stockholders of the said company on the said 10th day of January, 1870.

And the said defendants further say that the said plaintiffs are, and have been for a long time, indebted in the sum of seven hundred thousand dollars, ($700,000,) for which sum their bonds, bearing interest at the rate of six per centum per annum, have been issued, payable at a term of years after their date; and that upon the first day of January, 1870, the sum of twenty-one thousand dollars, ($21,000,) computed in the legal tender Treasury notes of the United States, fell due, and was payable by the said plaintiffs as and for the semi-annual interest of the said bonds for the preceding six months.

And the defendants further say that the said plaintiffs afterwards, and a long time before the said time, when, &c., made due return of the amount of the said dividend and interest, payable as aforesaid, to the assessor of the internal revenue of the United States for the first collection dis-

trict of Pnnsylvania, and a tax of five per centum on the said amount to wit: the sum of three thousand two hundred and twenty-eight dollars and thirty-eight cents, ($3,228 38,) was duly assessed by him on the said plaintiffs, which said tax thereupon became due and payable to the United States on or before the last day of March, 1870.

And the said defendants further say that the said William H. Barnes, long before, and at the time when, &c., was the collector for the first collection district of Pennsylvania; and the said James N. Kerns at the same time was deputy collector thereof for the same district.

14 And that the said William H. Barnes, being the collector of the internal revenue of the United States for the said district as aforesaid, did duly notify the said plaintiffs that the said tax so assessed against them was due and payable on or before the said last day of March, 1870, as aforesaid; and that unless the same should be paid on or before that day, it would become his duty to collect the same, together with a penalty of five per centum additional thereto, and interest at the rate of one per centum per month from the time when the said tax was due and payable.

And the said defendants further say that the said tax was not paid by the said plaintiffs to the said William H. Barnes, collector as aforesaid, on or before the said last day of March, 1870; whereupon afterwards, and long before the time when, &c., to wit, on the 21st day of April, 1870, he, the said William H. Barnes, collector as aforesaid, did, in due form, demand payment thereof by the said plaintiffs, together with five per centum additional thereto, and such interest as might accrue before payment; and did further notify the said plaintiffs that if the said tax, penalty, and interest should not be paid within ten days from the making of the said demand, he would make distraint therefor, as provided by law.

And the said defendants further say that, notwithstanding the said notice and demand, the said tax, together with the five per centum additional thereto, and the interest accrued thereupon as aforesaid, was, on the aforesaid 4th day of May, 1870, and at the said time when, &c., yet wholly due and unpaid by the said plaintiffs; wherefore the said William H. Barnes, collector as aforesaid, and the said James N. Kerns, deputy collector as aforesaid, by his command on the said day when, &c., did enter into and upon the said building of the said plaintiffs, situate at the southwest corner of Third street and Willing's alley, in the city of Philadelphia, in which, &c., and did then and there seize, take, and distrain the said goods and chattels in the said declaration mentioned, as and for a distress for the said tax, and together with the five per centum additional thereto, and the interest accrued thereupon as aforesaid, and took and seized the same thereon as such distress as aforesaid, on the most fit and convenient part thereof for that purpose, according to the form of the statute in such case made and provided, which are the same supposed trespasses in the introductory part of this plea mentioned.

And this the said defendants are ready to verify, &c. Wherefore they pray judgment if the said plaintiffs ought to have and maintain their aforesaid action thereof against them, &c.

AUBREY H. SMITH,
For Defendants.

And afterwards, to wit, on the same day, the plaintiffs aforesaid, by their attorneys aforesaid, come into court here and file their replication and demurrer, as follows:

15 *Replication and demurrer.*

Replication to first plea. And the said plaintiffs, as to the plea of the said defendants by them first above pleaded, and whereof they have put themselves upon the country, do the like.

Demurrer to second plea. And the said plaintiffs, as to the plea of the said defendants by them second above pleaded, say that the same, and the matters therein contained, the manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendants, and that they, the said plaintiffs, are not bound by law to answer the same. And this the said plaintiffs are ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment, and their damages by them sustained on occasion of the committing of the said trespasses to be adjudged to them, &c.

CHAPMAN BIDDLE,
THEO. CUYLER,
For Plaintiffs.

And thereupon, upon the same day, the defendants, by their attorney aforesaid, join in demurrer; and the said joinder being read and filed is as follows:

Joinder in demurrer.

Joinder in demurrer. And the said defendants say that their said plea by them secondly above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiffs from having or maintaining their aforesaid action thereof against them, the said defendants, and the said defendants are ready to verify and prove the same when, where, and in such manner as the court here shall direct and award. Wherefore, inasmuch as the said plaintiffs have not answered the said plea, nor hitherto in any manner denied the same, the said defendants pray judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against the said defendants, &c.

AUBREY H. SMITH,
For Defendants.

16 And afterwards, to wit, on the first day of July, in the year last aforesaid, the said defendants, by Aubrey H. Smith, esquire, their attorney, leave of the court being first had and obtained, withdraw their said plea of not guilty.

And afterwards, to wit, on the nineteenth day of September, in the year last aforesaid, come the parties aforesaid, by their attorneys aforesaid, upon which the record and matters aforesaid having been seen and by the court now here fully understood, and all and singular the premises having been examined, and mature deliberation being had thereupon, for that it seems to the court that the demurrer aforesaid is not sufficient in law, and that the plaintiffs aforesaid ought to have and maintain their said action against the said defendants, as the said plaintiffs have above alleged, by reason whereof the said plaintiffs ought to recover from the said defendants their dam-

ages by reason of the premises; but because it is unknown to our said court here what damages the said plaintiffs have sustained in the premises as for their costs and charges by them about their suit in this behalf expended, the marshal is commanded that, by the oaths and
17 affirmations of twelve honest and lawful men of his district, he diligently inquire what damages the aforesaid plaintiffs have sustained, as well by the occasion of the premises aforesaid, as for their costs and charges by them about their said suit in this behalf expended.

Whereupon, afterwards, to wit, on the seventeenth day of October, in the year last aforesaid, because it is unknown what damages the said plaintiffs have sustained, they, by their attorneys aforesaid, sue forth out of our said court here, a writ of inquiry of damages; which said writ being issued, is in the words following, to wit:

UNITED STATES,
Eastern District of Pennsylvania, sct:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

Whereas William H. Barnes and James N. Kerns, defendants, were attached to answer "The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company," plaintiffs, of a plea of trespass and so forth. And thereupon the said plaintiffs, by Chapman Biddle
18 and Theodore Cuyler, their attorneys, complain against the said defendants, for that the said defendants, on the fourth day of May, A. D. 1870, with force and arms, &c., seized, took, and distrained certain goods and chattels, to wit, three walnut desks, six walnut chairs, one table, and other personal property of said plaintiffs, being in their office building, situate at the southwest corner of Third and Willing's alley, in the said city and county, of great value, to wit, of the value of thirty-five hundred dollars, at the city and county aforesaid; and then and there kept and detained the said goods and chattels, so seized and distrained, for a long space of time, to wit, for the space of one day then next following, whereby the said plaintiffs, for and during all that time, lost, and were deprived of, the use and benefit of the said goods and chattels, and thereby the same then and there became and were greatly damaged, lessened in value, and spoiled, to wit, at the city and county aforesaid. And other wrongs to the said plaintiffs then and there did, against the peace of the Commonwealth of Pennsylvania, and to the damage of the said plaintiffs, of five thousand dollars.
19 And thereupon they bring their suit, &c.

And it was in such manner proceeded in our said court, that the said plaintiffs ought to recover their damages against the said defendants which they sustained by reason of the premises; but because it is unknown what damages the said plaintiffs have sustained by the occasion thereof, we command you, that by the oaths or solemn affirmations of twelve honest and lawful men of your district, you diligently inquire what damages the said plaintiffs have sustained, as well by occasion of the premises as for their costs and charges by them about their suit in that behalf expended. And the inquisition that you shall take thereof, make manifest before our judges at Philadelphia, at a circuit court of the United States for the eastern district of Pennsylvania, in the 3d circuit, at Philadelphia, there to be held the first Monday of November next, under your seal and the seals of those by whose oaths or affirmations respectively you shall make that

inquisition. And have you then and there the names of those by
20 whom you shall make that inquisition, and this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this seventeenth day of October, A. D. one thousand eight hundred and seventy.

[SEAL.] SAMUEL BELL,
Clerk Circuit C't U. S.

And afterwards, to wit, on the seventh day of November, in the year of our Lord last aforesaid, come into court here the parties aforesaid, by their attorneys aforesaid, and Edgar M. Gregory, the marshal for the said eastern district of Pennsylvania, by virtue of the writ to him directed, returned here a certain inquisition; which being read is as follows, to wit:

U. S. A., *Eastern District of Pennsylvania, ss:*

An inquisition indented and taken at the city of Philadelphia, in the county aforesaid, this nineteenth day of October in the year of our Lord one thousand eight hundred and seventy, before Edgar M. Gregory, esq., marshal, in and for the eastern district of Pennsylvania
21 aforesaid, by the oaths and affirmations of the jurors whose names and seals are hereunto annexed, good and lawful men of the district aforesaid, who say upon their oaths and affirmations, that "The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company," plaintiffs in the writ to this inquisition annexed named, has sustained damages by means of the premises in the said writ mentioned, against William H. Barnes, one of the defendants, and against James N. Kerns, the other of the defendants, to the amount of fifty dollars, lawful money, as aforesaid, and eighty-seven $\frac{57}{100}$ dollars costs.

In testimony whereof, as well I, the said marshal, as the jurors aforesaid, to this inquisition, have affixed our hands and seals the day and year above mentioned.

E. M. GREGORY, [SEAL.]
U. S. Marshal E. D. of Penn'a.

HENRY DAVIS.	[SEAL.]	JOHN C. GERRISH.	[SEAL.]
J. A. GREGORY.	[SEAL.]	JAMES CREMER.	[SEAL.]
AMOS BATEMAN.	[SEAL.]	JOHN MANDERSON.	[SEAL.]
MAHLON H. DICKINSON.	[SEAL.]	M. T. WILLIS.	[SEAL.]
HENRY H. REED.	[SEAL.]	H. G. CLARK.	[SEAL.]
B. C. WORTHINGTON.	[SEAL.]	J. T. BAILEY.	[SEAL.]

22 And thereupon, forasmuch as the court now here is not as yet advised about giving judgment of and upon the premises, day is therefore given to the said parties to be before the court in four days, to wit, on the eleventh day of November, in the year aforesaid, for hearing judgment of and upon the premises, because the said court here is not yet advised thereupon. At which said day, to wit, the eleventh day of November, before our said court come the said The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company, by their attorneys aforesaid, whereupon the premises being seen and fully understood by the court here, and mature deliberation being had thereon, it is considered that the said The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company do recover from the said William H. Barnes and

James N. Kerns, their damages aforesaid by the said inquisition in form aforesaid found, and also eighty-seven dollars and fifty-seven cents, adjudged to the said The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company, by the court now here, at their
23 request, for increase of their said costs and charges, which said damages in the whole amount to the sum of one hundred and thirty-seven dollars and fifty-seven cents. And the said defendants in mercy, &c.

And, afterwards, to wit, on the fifteenth day of November, in the year of our Lord last aforesaid, come the said defendants, by Aubrey H. Smith, esquire, their attorney, and file their assignments of error; which being read are as follows, to wit:

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said plaintiffs in error, by Aubrey H. Smith, their attorney, and say that, in the record and proceedings aforesaid, it appears that the judgment aforesaid given was given for the said defendants in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs in error against the said defendants in error; and the said plaintiffs in error pray that the said judgment aforesaid may be reversed, annulled, and altogether held for
24 nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

AUBREY H. SMITH,
Att'y for Pl'ffs in Error.

UNITED STATES OF AMERICA, *ss:*

To The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, wherein William H. Barnes and James N. Kerns are plaintiffs, and you, the said Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company are defendants in error, to show cause, if any there may be, why judgment in the said writ of error mentioned should not be corrected and speedy
25 justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of November, A. D. 1870.

W. STRONG,
One of the Justices of the Supreme Court U. S.

(Endorsed:)
We accept service of the within writ for the defendants therein named, and request the entry of our appearance to be made of record.

CHAPMAN BIDDLE.
THEO. CUYLER.

26 UNITED STATES,
Eastern District of Pennsylvania, sct:

[SEAL.] The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company, plaintiffs, and William H. Barnes and James N. Kerns, defendants, in a plea of trespass vi et armis, a manifest error has entervened to the great damage of the said defendants, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the justices of the Supreme Court of the United States, at a court to be holden at Washington, on the first Monday of December next, that the record and process aforesaid, being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the Honourable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fifteenth day of November, A. D. one thousand eight hundred and seventy, and in ninety-fifth year of the independence of the said United States.

W. GRIER HIBLER,
Pro. Clerk C. C. U. S. E. D. of Pa.

Allowed by—

W. STRONG,
One of the Justices of the Supreme Court U. S.

27 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

I, Samuel Bell, clerk, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending between The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company, plaintiffs, and William H. Barnes and James N. Kerns, defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this twenty-ninth day of November, A. D. 1870, and in the ninety-fifth year of the independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk C. C. U. S., E. D. of Pa.

(Indorsement on cover:) No. 338. William H. Barnes and James N. Kerns, plaintiffs in error, vs. The Harrisburg, Portsmouth, Mount Joy, and Lancaster Railroad Company. E. Pennsylvania C. C. U. S. Filed 6th December, 1870.